Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of	)
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Proposal by City of Laredo, Texas, and Nuevo Laredo, Mexico, To Create a Cross-Border Local Calling Area	)
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DECLARATORY RULING

Adopted: January 22, 2002 **Released: February 4, 2002**

By the Commission:

I. INTRODUCTION

1. In this declaratory ruling[1] we address a proposal submitted by the City of Laredo, Texas (Laredo), to create a cross-border extended calling area that would encompass Laredo and the municipality of Nuevo Laredo, Mexico, two cities on the U.S./Mexican border. Laredo has made significant efforts to create a local calling plan that would benefit both residential and business customers of this area by substantially lowering the international long-distance rates that now apply between the two cities. Government officials from Laredo and the State of Texas have expressed strong interest in this objective and have sought Commission support in making it a reality. We recognize the public interest benefits of this effort by local and state officials and share the goal of reduced cross-border calling prices. This declaratory ruling sets forth an approach that could accomplish this goal within the framework of the Commission's existing rules.

2. Over the past several years, the Commission has adopted policies and rules with the goal of increasing competition and reducing consumer rates for telecommunications services, including international long distance service. Thus we applaud and support the efforts of Laredo and the Public Utility Commission of Texas (Texas PUC) to find a creative and effective solution to the high cost of telecommunications that currently exist between these border cities.[2] Laredo

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[1] Pursuant to Section 1.2 of the Commission's Rules, 47 C.F.R. § 1.2, the Commission may, on its own motion, issue a declaratory ruling.

[2] These efforts include numerous meetings with Commission staff and a public hearing conducted by The Public Utilities Commission of Texas (Texas PUC). *See, e.g.,* Joint Letter from Elizabeth G. Flores, Mayor of Laredo, and Dave Lopez, President, Southwestern Bell Texas, to David Featherstone, Telecommunication Industry

(continued....)

and Nuevo Laredo share a strong community of interest that would greatly benefit from lower communication costs, and we strongly support a collaborative effort that would effectuate this change.

3. We agree with the Texas PUC, however, that any plan to lower international rates between Laredo and Nuevo Laredo will require participation and mutual cooperation among the carriers involved, as well as federal telecommunications regulatory bodies in the United States and Mexico. Thus, we are not in the position to grant Laredo's request that the Commission unilaterally create an extended calling plan between Laredo and Nuevo Laredo. However, we would welcome efforts by U.S. and Mexican carriers to negotiate arrangements for compensation between carriers that would result in lower calling prices between Laredo and Nuevo Laredo.

II. BACKGROUND

4. Laredo and Nuevo Laredo are located directly opposite each other on the Rio Grande, on either side of the border between the United States and Mexico (north and south, respectively). The two cities have extensive economic and social ties that generate substantial communications across the border. Because telephone calls between Laredo and Nuevo Laredo are international calls, the cost of such calls is substantially higher than would be the case between two adjacent cities within the United States that share communities of interest.

5. Between 1978 and 1984, the Southwestern Bell Telephone Co. (Southwestern Bell), at that time owned by American Telephone and Telegraph Company (AT&T), offered a one-way optional dial telephone service at flat residential and business rates for calls between Laredo and Nuevo Laredo and between two other city pairs on the Texas-Mexico border.[3] This arrangement allowed a subscriber to realize a substantial reduction in the cost of calling Nuevo Laredo compared to the cost of similar calls under the international toll rates then in effect between the United States and Mexico. These calling arrangements terminated, however, after AT&T's divestiture of Southwestern Bell under a 1983 consent decree.[4]

6. Since the late 1990's Laredo has been working with the Texas PUC, the Commission, and local and long-distance carriers in an effort to create a local calling zone between the two cities similar to one that existed prior to the divestiture of AT&T in 1983. These efforts have included a public hearing held in Laredo on June 6, 2000 seeking comment on how such an extended calling area might be achieved, and numerous discussions involving the Commission, Texas state and local officials, AT&T and Southwestern Bell.[5] In addition, Laredo

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Analysis Division, Public Utility Commission of Texas (dated Jan. 10, 2001); Texas PUC Docket No. 21951, Laredo/Nuevo Laredo Toll-Free Expanded Area Calling; Letter from Jennifer Fagan, Attorney, Texas PUC, to Magalie Salas, Secretary, FCC (dated Sept. 6, 2001).

[3] *See, e.g.,* Laredo Comments at 3-4.

[4] *United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982*), aff'd sub nom. Maryland v. United States*, 460 U.S.1001 (1983).

[5] *See* Letter from Judy Walsh and Brett A. Perlman, Commissioners, Texas PUC, to Chairman William Kennard, and Commissioners Susan Ness, Michael K. Powell, Gloria Tristani, and Harold Furchtgott-Roth, Federal Communications Commission (dated May 31, 2000).

and Nuevo Laredo negotiated a collaborative agreement that committed both cities to work toward the realization of the cross-border local calling area and to seek approval of that calling area from their respective national regulatory authorities.[6] The agreement was filed with the Commission on November 30, 2000. The Collaborative Agreement contains a proposed arrangement that would permit a flat-rate charge for unlimited calls between Laredo and Nuevo Laredo. The agreement, however, does not make any proposal with respect to how such a cross-border local calling area might be effectuated.

7. On March 2, 2001, we released a Public Notice seeking comment on the *Collaborative Agreement* and its proposed cross-border calling area. Specifically, we requested that commenters discuss the benefits that such a calling area may offer, as well as any concerns it could cause. We requested that commenters discuss the legal basis and regulatory and/or commercial structure that could create a *de jure* or *de facto* local calling area and the role, if any, that government agencies of the United States and Mexico would have in effectuating the desired result.

8. Five parties filed comments,[7] and three parties filed replies.[8] The City of Laredo and the Texas PUC strongly support creation of a local calling plan between the two cities.[9] The State of Texas also supports creation of a local calling plan in principle, but notes consumer issues that would need to be addressed.[10] Two of the carriers involved, AT&T and Southwestern Bell, do not oppose the proposal but raise issues of technical and economic feasibility. They also note the existence of Mexican regulations that they claim would serve as a barrier to cross-border competition and that would impede development of such a plan.[11] No comments were filed by Mexican entities, whether government or private.

III. DISCUSSION

9. We fully support the goal of lowering rates for calls between Laredo and Nuevo Laredo. The Commission has long favored initiatives that reduce the prices consumers pay for

[6] *See* Collaborative Agreement Between the Municipality of Nuevo Laredo, Tamaulipas (Mexico) and the City of Laredo, Texas (USA) (filed Nov. 30, 2000) (*Collaborative Agreement*).

[7] *See* Comments of Laredo, Texas (filed April 16, 2001) (Laredo Comments); Comments of the Public Utility Commission of Texas (filed April 19, 2001) (Texas PUC Comments); Comments of the State of Texas (filed April 17, 2001) (State of Texas Comments); Comments of AT&T Corporation (filed April 16, 2001) (AT&T Comments); Comments of SBC Communications (filed April 17, 2001) (SBC Comments).

[8] *See, e.g.,* Reply Comments of Laredo, Texas (filed May 23, 2001) (Laredo Reply Comments); Reply Comments of the Public Utility Commission of Texas (filed May 23, 2001) (Texas PUC Comments); Reply Comments of Sage Telecom, Inc. (filed April 26, 2001) (Sage Telecom Reply Comments).

[9] *See, e.g.,* Laredo Comments at 3-7; Texas PUC Comments at 2-3. *See also* Sage Telecom Reply Comments at 1-2.

[10] State of Texas Comments at 1-2.

[11] SBC Comments at 2-4; AT&T Comments at 2-4.

international telephone calls. To that end the Commission adopted its *Benchmarks Order*,[12] which limits the rate that U.S. carriers may pay foreign carriers to terminate international traffic. The Commission has also reformed its International Settlements Policy (ISP) to encourage market-based alternatives to the traditional accounting rate system.[13] The goal of these policies is to reduce settlement rates to more cost-based levels and thereby lower the cost of international service. Since 1998, the year the *Benchmarks Order* took effect, there has been a substantial reduction in the average price of international calls on most international routes.[14]

10. We agree with the City of Laredo that lower calling rates between Laredo and Nuevo Laredo would enhance an already robust Texas border economy.[15] The record indicates that the cities of Laredo and Nuevo Laredo share a significant economic community of interest and that cost-effective telecommunications would facilitate trade and benefit both residential as well as business customers.[16] Moreover, there is evidence in the record that the high cost of telecommunication between these two cities may be contributing to a growing number of illegal radio transmitters in Laredo and Nuevo Laredo that are used as alternatives to the service

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[12] *Report and Order on Regulation of International Settlement Rates*, 12 FCC Rcd 19806 (1997) (*Benchmarks Order*) *aff'd. sub nom*., Cable and Wireless P.L.C. v. FCC 166 F. 3d 1224 (D.C. Cir., 1999); *Report and Order on Reconsideration and Order Lifting Stay*, 14 FCC Rcd 9256 (1999).

[13] The international settlement system, which is based on the accounting rate, developed because national monopoly carriers cooperatively supplied international telecommunications services and shared the costs of providing the service. An accounting rate is the price a U.S. facilities-based carrier negotiates with a foreign carrier for handling one minute of international telephone service. Each carrier's portion of the accounting rate is referred to as the settlement rate. In almost all cases, the settlement rate is equal to one-half of the accounting rate. The ISP requires uniform accounting rates, uniform terms of sharing tolls, and uniform rates among U.S. carriers providing the same service to the same carrier in a foreign point. The ISP also requires that U.S. carriers accept only their proportionate share of return traffic. *See Implementation of Uniform Settlements Policy for Parallel International Communications Routes*, 51 Fed. Reg. 4736 (1986) (*ISP Order*); *Reconsideration*, 2 FCC Rcd 1118 (1987); and *Further Reconsideration*, 3 FCC Rcd 1614 (1988). In 1991, the Commission reformed the ISP to encourage and facilitate accounting rate reductions by U.S. carriers. *See Regulation of International Accounting Rates*, 6 FCC Rcd 3553 (1991) (*Phase 1 Report and Order*); *Reconsideration*, 7 FCC Rcd 8049 (1992) and *Regulation of International Accounting Rates*, 7 FCC Rcd 8040 (1992) (*Phase II Second Report and Order and Second Further Notice of Proposed Rulemaking*). In 1996, the Commission codified the proportionate return policy. *See Fourth Report and Order on Regulation of International Accounting Rates*, 11 FCC Rcd 20063 (1997) (*Flexibility Order*). In 1999, the Commission amended the ISP so that it does not apply on routes where settlement rates are twenty-five percent or more below the Commission's benchmark rates and to agreements with foreign carriers that lack market power. *See 1998 Biennial Regulatory Reform of the International Settlements Policy and Associated Filing Requirements, Report and Order and Order on Reconsideration*, 14 FCC Rcd 7963 1999 (*ISP Reform Order*).

[14] *See* Table A1 of FCC Section 43.61 Traffic Data Reports for 1998 and 1999. Table A1 sets forth for each international route the number of minutes of telephone traffic and the total revenues the carriers received. Dividing the total revenues by the number of minutes will yield an average price figure for each country.

[15] City of Laredo Comments at 5.

[16] *See, e.g.,* City of Laredo Comments at 5-7; Comments of Texas PUC at 1-3 (citing examples of the robust economy shared by the two localities).

provided by the U.S. carriers and Telmex.[17] In particular it is alleged in the record that the use of illegal radio facilities is causing interference with Laredo's emergency and safety communications.[18] We therefore fully support the efforts of the Texas PUC and the City of Laredo in facilitating lower calling prices for calls between Laredo and Nuevo Laredo.

11. We believe that the way to achieve lower cross-border calling prices is for the telecommunications carriers doing business in the cross-border area to negotiate lower rates for settling cross-border traffic. Thus, we agree with the Texas PUC that we should encourage the telecommunications carriers doing business in the area to do so.[19] Such lower rates would enable carriers on both sides of the border to reduce calling prices for consumers to the point where the prices are comparable to those charged for local calls within Laredo.

12. Achievement of such lower calling prices should be possible under current U.S. regulations. Historically, U.S. carriers and the sole Mexican international carrier with authority to negotiate with them, Telmex, have negotiated rates for terminating U.S.-Mexico traffic under the traditional accounting rate system. However, the Commission has adopted rules that permit U.S. carriers to negotiate market-based rates outside the traditional accounting rate system. Under the Commission's international simple resale (ISR) policy, U.S. carriers may petition to allow the negotiation of settlements outside the traditional accounting rate system on routes where at least 50 percent of the traffic is settled at or below the Commission's benchmark rates.[20] Under this policy, because 50 percent of traffic to Mexico is settled at the benchmark rate (19 cents) or less, U.S. carriers could request authority from the Commission to negotiate market-based settlement rates on the U.S.-Mexico route, including, for example, rates for traffic between Laredo and Nuevo Laredo that are lower than rates between the United States and other destinations in Mexico. Alternatively, on a route where settlement rates are at least 25 percent below the Commission's benchmark rates, U.S. carriers may request exemption for that route from the Commission's international settlements policy (ISP).[21] This exemption provides even greater flexibility for negotiation of intercarrier arrangements and eliminates the need to obtain Commission review of negotiated rates. Under either approach, U.S and Mexican carriers could, for example, enter into reciprocal compensation arrangements similar to those used domestically by local exchange carriers, including bill and keep arrangements. These and other compensation arrangements between U.S. and Mexican carriers (such as cost-based settlement rates) could permit such carriers to price cross-border traffic between Laredo and Nuevo Laredo at rates comparable to local traffic within each city.

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[17] Texas PUC Reply Comments at 3; Letter from Henry Cuellar, Ph.D., Secretary of State, State of Texas, to Michael K. Powell, Chairman, Federal Communications Commission (dated July 5, 2001).

[18] *Id.*

[19] *See* Texas PUC Comments at 3.

[20] *See Benchmarks Order*, 12 FCC Rcd at 11,916-21. *See also Rules and Policies of Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd 23,891, 23,930-31 (1997), simplifying the procedure for granting waivers of the ISP for agreements with countries, such as Mexico, that are members of the World Trade Organization.

[21] *See 1998 Biennial Regulatory Reform of the International Settlement Policy and Associated Filing Requirements, Report and Order on Reconsideration*, 14 FCC Rcd 7963, 7985 (1999). Given the 19-cent benchmark for Mexico, 14.5 cents would be 25 percent below the benchmark.

13. We note, however, that implementation of alternatives to the traditional accounting rate system will require the cooperation of Mexico's telecommunications regulatory authority, Comision Federal de Telecomunicaciones de los Estados Unidos Mexicanos (COFETEL), and Mexico's foreign carriers. COFETEL's rules are currently interpreted to prohibit such alternative settlement rates.[22] We are hopeful that COFETEL will consider ways to permit alternatives, even if only on a pilot basis for calls between Laredo and Nuevo Laredo, that would permit U.S. and Mexican carriers to negotiate alternative settlements. Such alternative settlements could substantially lower the cost of providing service between the U.S. and Mexico and could therefore lead to lower calling prices for consumers.

14. As a final matter, we share concern about the growing use of illegal radio transmitters in Laredo and Nuevo Laredo. We believe that the availability of lower calling rates between Laredo and Nuevo Laredo would reduce, if not eliminate, the use of such transmitters. We also note that any entity alleging that it has been harmed by illegal cross-border transmission may avail itself of the Commission's complaint procedures.[23] If the existence of such transmission is shown, the Commission can take vigorous enforcement action, especially to the extent that unlawful cross-border transmission causes interference with public safety transmissions.

IV. CONCLUSION

15. We applaud and fully support the local and state officials of Texas in their efforts to reduce consumer rates for international telecommunications service between the United States and Mexico. To that end, we would welcome a petition by U.S. carriers to negotiate alternative settlements for traffic between the United States and Mexico. We note that, if COFETEL were to identify ways to permit alternative settlement rates, even if only on a pilot basis for calls between Laredo and Nuevo Laredo, U.S. and Mexican carriers could be in the position to negotiate arrangements other than those currently in place. Consumers on both sides of the border would benefit through lower calling prices and increased communications.

V. ORDERING CLAUSE

16. IT IS ORDERED that this Declaratory Ruling is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

[22] Mexican International Long-Distance Telecommunications Regulation 10 requires that all Mexican international telecommunications carriers settle international traffic in accordance with Mexico's uniform accounting-rate system and proportionate return. COFETEL, Reglas para prestar el Servicio de Larga Distancia Internacional que deberan aplicar los concesionarios de redes publicas de telecomunicationes autorizados para prestar este servicio, Regla (regulation) 10, 44 Diario Oficial (Official Gazette) p.4 (Dec. 11, 1996).

[23] *See* 47 C.F.R. §§1.701 *et seq.*